

8/5 (14) 090

Christine Joyce

From: Roland Bartl
Sent: Tuesday, July 30, 2013 10:38 AM
To: Christine Joyce
Cc: Christine Morgan; 'Authentic Homes Inc'; Kristen Domurad-Guichard; MargolisK@sudbury.ma.us; 'Daniel Gaulin'
Subject: FW: Amendments
Attachments: AMENDMENT TO REGULATORY AGREEMENT - 7.29.doc; Ellsworth Village Amendment No.13.doc

Importance: High

I scanned through the documents (didn't proof); It seems to me that they seem to fairly represent and implement what the Planning Board has voted to agree to and memorialized in the latest amendment decision. As discussed, this can go on consent. But, make sure the Selectmen sign the amendment to the Regulatory Agreement (you may want to add two more signature lines and add the names)

Roland Bartl, AICP
Planning Director
Town of Acton
472 Main Street
Acton, MA 01720
978-929-6631

From: Christine Joyce
Sent: Tuesday, July 30, 2013 8:39 AM
To: Roland Bartl
Subject: FW: Amendments
Importance: High

Roland, FYI should this be on Consent or Selectmen's Business?

From: Authentic Homes Inc [<mailto:authhomes@msn.com>]
Sent: Tuesday, July 30, 2013 7:23 AM
To: Christine Joyce
Subject: FW: Amendments

Good Morning,
Attached are the amendments to the Ellsworth Village Regulatory Agreement and the Master Deed. Please let me know if you need any additional info.

Thanks for your help!
Donna

Donna Cisek
978-266-9751

> From: Christine@lawmorgan.com
> To: authhomes@msn.com

Christine Joyce

From: Authentic Homes Inc [authhomes@msn.com]
Sent: Tuesday, July 30, 2013 7:23 AM
To: Christine Joyce
Subject: FW: Amendments
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Good Morning,

Attached are the amendments to the Ellsworth Village Regulatory Agreement and the Master Deed. Please let me know if you need any additional info.

Thanks for your help!
Donna

Donna Cisek
978-266-9751

> From: Christine@lawmorgan.com
> To: authhomes@msn.com
> Subject: Amendments
> Date: Mon, 29 Jul 2013 14:59:01 -0400
>
> Hi Donna,
>
> Take a look at what I have here and let me know if this is ok or if you need
> any changes.
>
> Christine Morgan, Esq.
> 179 Great Road
> Acton, MA 01720
> 978-263-1402 phone
> 978-299-5220 fax

AMENDMENT TO REGULATORY AGREEMENT

Reference is hereby made to a Regulatory Agreement dated July 20, 2006 by and between Ellsworth Village, LLC, a Massachusetts Limited Liability Company, having an address at 25 Westford Lane, Acton, MA 01720 ("Developer") and the Town of Acton, acting by and through its Board of Selectmen, having an address of 472 Main Street, Acton, MA 01720 (the "Municipality") and recorded with the Middlesex South District Registry of Deeds, Book 47846, Page 246 ("Regulatory Agreement").

Whereas, said Regulatory Agreement affects and encumbers the Affordable Units 17, 30 and 31 of the Ellsworth Village Condominium pursuant to the most recent Amendment to the Regulatory recorded with said Deeds, Book 53714, Page 189;

Whereas, the Developer has requested the Municipality to substitute one of the three affordable units as required in the Original Planning Board Decision filed with the Town Clerk on April 27, 2005, as amended, with a market rate unit in exchange for a monetary contribution to the Acton Community Housing Program Fund;;

Whereas, the Municipality has agreed to said substitution in consideration of Fifty Thousand and 00/100 (\$50,000.00) Dollars being paid by the Developer to the Acton Community Housing Program Fund pursuant to Amendment #4 of Decision 05-01, Ellsworth Village Senior Residence Special Permit to be recorded herewith;

Now, therefore, paragraph 1 of the Regulatory Agreement is hereby amended as follows:

"1. This Regulatory Agreement affects and encumbers only the Affordable Units being Units numbered 30 and 31 of the Ellsworth Village Condominium.

Unit Distribution. The distribution of the Affordable Units by Unit size shall be as set forth below:

	Unit 30	Unit 31
Initial Certified Sales Price	\$150,000.00	\$150,000.00"

In all other regards said Regulatory Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as a sealed instrument this day of August, 2013.

DEVELOPER:
ELLSWORTH VILLAGE, LLC

Michael J. Jeanson
Authorized Signatory

MONITORING AGENT AND MUNICIPALITY

The Town of Acton
Board of Selectmen

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of August, 2013, then personally appeared before me, the undersigned notary public, Michael J. Jeanson, proved to me through satisfactory evidence of identification, which was _____ to be the person to whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes as Authorized Signatory of Ellsworth Village, LLC, as aforesaid.

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this _____ day of August, 2013, then personally appeared before me, the undersigned notary public, _____, proved to me through satisfactory evidence of identification, which was _____ to be the person to whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purposes as Authorized Signatory for the Town of Acton, as aforesaid.

Notary Public

My commission expires:

AMENDMENT NO. 13 TO THE MASTER DEED
OF ELLSWORTH VILLAGE CONDOMINIUM

ELLSWORTH VILLAGE, LLC, having its usual place of business at 25 Westford Lane, Acton, Middlesex County, Massachusetts 01720, being the Declarant in a Master Deed of Ellsworth Village Condominium dated July 20, 2006 and recorded with the Middlesex South District Registry of Deeds in Book 47846, Page 274 ("Master Deed"), in accordance with the provisions of said Master Deed, as amended, including but not limited to Sections 1, 4, 11, and 14 of said Master Deed does hereby amend the Master Deed of Ellsworth Village Condominium to change the designation of existing Unit 17 from an affordable rate unit to a market rate unit pursuant to the terms and provisions contained in Amendment #4 of Decision 05-01, issued by the Town of Acton Planning Board, dated April 23, 2013 to be recorded herewith.

The revised undivided interest in the common areas and facilities of the Condominium to be allocated to each Unit is attached hereto as Schedule C.

In witness whereof, the said Ellsworth Village, LLC has caused its seal to be hereto affixed and these presents to be signed and delivered in its name and behalf by Michael J. Jeanson, its Member, hereby duly authorized this ____ day of August, 2013.

ELLSWORTH VILLAGE, LLC

By: _____
Michael J. Jeanson, Authorized Signatory

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this ____ day of August, 2013, then personally appeared before me, the undersigned notary public, Michael J. Jeanson, proved to me through satisfactory evidence of identification, which was a Massachusetts driver's license, to be the person to whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purposes as Authorized Signatory of Ellsworth Village, LLC as aforesaid.

Notary Public
My commission expires:

ELLSWORTH VILLAGE CONDOMINIUM
SCHEDULE B

<u>PHASE NO.</u>	<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>STREET NO.</u>	<u>SQUARE FOOTAGE</u>
1	1	1	1 Ellsworth Village Road	3,615
1	2	1	3 Ellsworth Village Road	3,615
1	3	2	5 Ellsworth Village Road	3,615
1	4	2	7 Ellsworth Village Road	3,615
1	5	3	9 Ellsworth Village Road	3,615
1	6	3	11 Ellsworth Village Road	3,615
2	7	4	13 Ellsworth Village Road	3,615
2	8	4	15 Ellsworth Village Road	3,650
2	30	14	8 Ellsworth Village Road	3,635
2	31	14	6 Ellsworth Village Road	3,635
2	32	15	4 Ellsworth Village Road	3,635
2	33	15	2 Ellsworth Village Road	3,635
3	28	13	12 Ellsworth Village Road	3,595
3	29	13	10 Ellsworth Village Road	3,595
4	26	12	18 Ellsworth Village Road	3,595
4	27	12	16 Ellsworth Village Road	3,595
5	25	11	20 Ellsworth Village Road	3,595
5	24	11	22 Ellsworth Village Road	3,595
6	9	5	17 Ellsworth Village Road	3,390
6	10	5	19 Ellsworth Village Road	3,375
7	21	10	28 Ellsworth Village Road	3,345
7	22	10	26 Ellsworth Village Road	3,360
7	23	10	24 Ellsworth Village Road	3,345
8	19	9	32 Ellsworth Village Road	3,365
8	20	9	30 Ellsworth Village Road	3,365
9	16	8	38 Ellsworth Village Road	3,355
9	17	8	36 Ellsworth Village Road	3,355
9	18	8	34 Ellsworth Village Road	3,360
10	14	7	27 Ellsworth Village Road	3,380
10	15	7	29 Ellsworth Village Road	3,375
11	11	6	21 Ellsworth Village Road	3,565
11	12	6	23 Ellsworth Village Road	3,590
11	13	6	25 Ellsworth Village Road	3,560

NOTES:

1. The Unit Designation of each unit, and a statement of its location, approximate area, number of rooms and immediate common area to which it has access and any other data necessary for its proper identification, are shown on the Condominium Plans hereinbefore mentioned and made a part hereof.
2. Each Unit contains such rooms and garages, as well as such other characteristics, all as shown on the Condominium Plans, to which reference is hereby made for a more particular description. Each Unit is used only as a single-family home, including any accessory uses allowed under the Town of Acton Zoning By-Law.
3. Each Unit has an easement, as an appurtenance to the Unit, for the exclusive right to use an Exclusive Use Area consisting of the corresponding number EUA, as shown on the Condominium Plans.
4. Each time the Master Deed is amended to add one or more Units, the percentage of undivided interest in the Common Areas and Facilities of each existing Unit and each Unit added to the Condominium by such amendment shall b*e calculated (and as to existing Units altered) so that the percentage of undivided interest in the Common Areas and Facilities shall conform with the provisions of the Act.

*The square footage includes the areas designated as Basement on said Floor Plans.

ELLSWORTH VILLAGE CONDOMINIUM

SCHEDULE C

PHASE 11

<u>PHASE NO.</u>	<u>UNIT NO.</u>	<u>BUILDING NO.</u>	<u>STREET NO.</u>	<u>CURRENT PERCENTAGE INTEREST</u>
1	1	1	1 Ellsworth Village Road	3.1456
1	2	1	3 Ellsworth Village Road	3.1456
1	3	2	5 Ellsworth Village Road	3.1456
1	4	2	7 Ellsworth Village Road	3.1456
1	5	3	9 Ellsworth Village Road	3.1456
1	6	3	11 Ellsworth Village Road	3.1456
2	7	4	13 Ellsworth Village Road	3.1456
2	8	4	15 Ellsworth Village Road	3.1456
2	30	14	8 Ellsworth Village Road	1.24
2	31	14	6 Ellsworth Village Road	1.24
2	32	15	4 Ellsworth Village Road	3.1456
2	33	15	2 Ellsworth Village Road	3.1456
3	28	13	12 Ellsworth Village Road	3.1456
3	29	13	10 Ellsworth Village Road	3.1456
4	26	12	18 Ellsworth Village Road	3.1456
4	27	12	16 Ellsworth Village Road	3.1456
5	25	11	20 Ellsworth Village Road	3.1456
5	24	11	22 Ellsworth Village Road	3.1456
6	9	5	17 Ellsworth Village Road	3.1456
6	10	5	19 Ellsworth Village Road	3.1456
7	21	10	28 Ellsworth Village Road	3.1456
7	22	10	26 Ellsworth Village Road	3.1456
7	23	10	24 Ellsworth Village Road	3.1456
8	19	9	32 Ellsworth Village Road	3.1456
8	20	9	30 Ellsworth Village Road	3.1456
9	16	8	38 Ellsworth Village Road	3.1456
9	17	8	36 Ellsworth Village Road	3.1456
9	18	8	34 Ellsworth Village Road	3.1456
10	14	7	27 Ellsworth Village Road	3.1456
10	15	7	29 Ellsworth Village Road	3.1456
11	11	6	21 Ellsworth Village Road	3.1456
11	12	6	23 Ellsworth Village Road	3.1456
11	13	6	25 Ellsworth Village Road	3.1456

The housing units which are Affordable Units are those designated as Unit 30 and 31 on floor plans recorded with the Master Deed of the Ellsworth Village Condominium recorded with the Middlesex South District Registry of Deeds, as Plan No. 713 of 2007.

Christine Joyce

From: Kristen Domurad-Guichard
Sent: Monday, July 29, 2013 12:28 PM
To: Manager Department
Cc: Roland Bartl; Nancy Tavernier
Subject: FW: 36 Ellsworth Village - for BoS 8/5 action
Attachments: Ellsworth Village Amendment 4 - Signed.pdf; 4-23-13 Planning Board Minutes - Approved.pdf

Hi Christine,

Please find the Ellsworth Village Amendment and Planning Board Minutes of the April 23, 2013 meeting attached.

Thank you,
Kristen

Kristen Domurad-Guichard
Assistant Town Planner
Town of Acton
472 Main Street
Acton, MA 01720
P: 978-929-6631

From: Roland Bartl
Sent: Monday, July 29, 2013 12:10 PM
To: 'Authentic Homes Inc'
Cc: Manager Department; Kristen Domurad-Guichard; Nancy Tavernier
Subject: RE: 36 Ellsworth Village - for BoS 8/5 action

Donna:

This would then have to go onto the Selectmen's meeting agenda on August 5 – next Monday.

By copy of this I am letting Steve Ledoux know of your timing needs.

Please provide all materials for Selectmen's action by end-of-business to Christine Joyce at the Manager's office.

Kristen:

Please provide to Christine all back-up from the Planning Board in the matter.

Thank you !

Roland Bartl, AICP
Planning Director

Town of Acton
472 Main Street
Acton, MA 01720
978-929-6631

From: Authentic Homes Inc [<mailto:authhomes@msn.com>]
Sent: Monday, July 29, 2013 11:58 AM
To: Roland Bartl
Subject: 36 Ellsworth Village

Hi Roland,

36 Ellsworth Village Road has gone under agreement and will be selling around August 14th. This is the affordable unit that the Planning Board agreed to accept a monetary donation in order to sell as a market rate condo.

Christine Morgan will have the Regulatory Agreement modification prepared by tomorrow. Is there any chance we can get this signed by the Board of Selectmen within the next week or so as this is one of the requirements for the occupancy permit. We'll also have the amended Master Deed and the \$50,000 donation available this week.

Thanks,
Donna

Donna Cisek
978-266-9751



Planning Board

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 929-6631
Fax (978) 929-6340
planning@acton-ma.gov
www.acton-ma.gov

**AMENDMENT #4
OF DECISION
05-01**

R E C E I V E D
MAY - 1 2013

April 23, 2013

TOWN CLERK, ACTON

Ellsworth Village
Senior Residence Special Permit

This is an amendment by the Planning Board (hereinafter the Board) of its decision issued to Ellsworth Village, LLC (hereinafter the Applicant) filed with the Town Clerk on April 27, 2005, previously amended on April 27, 2006, February 17, 2009 and September 4, 2012 (together hereinafter the Original Decision).

This amendment is in response to the request of the Applicant to substitute one of the three affordable units as required in the Original Decision, with a monetary contribution to the Acton Community Housing Program Fund.

The Applicant presented the requested modification to the Board at a regular posted meeting on April 23, 2013. Board members Ryan Bettez, Jeff Clymer, Roland Bourdon, Kimberly Montella, Derrick Chin, Ray Yacouby (Associated Member) and Rob Bukowski (Associate Member) were present. The minutes of the meeting and submissions, on which this decision is based upon, may be referred to in the Office of the Town Clerk or in the Acton Planning Department.

1 EXHIBITS

Submitted for the Board's deliberation were:

- A letter from Authentic Homes, dated 04/02/13;
- A letter from Nancy Tavernier, Chair of the Acton Community Housing Corporation, dated 03/29/13.

2 FINDINGS AND CONCLUSIONS

- 2.1 The applicant has requested that the Board allow the substitution for one of the three affordable units with a monetary contribution in the amount of \$25,000 to the Acton Community Housing Program Fund as provided in Section 9B.12.9.1 of the Zoning Bylaw and to sell the last affordable unit at market rate.

- 2.2 Section 9B.12.9.1 of the Zoning Bylaw states the "Planning Board in its special permit may authorize or require the substitution of required AFFORDABLE SENIOR RESIDENCES with:

9B.12.9.2 Monetary contributions for affordable housing programs made to the Acton Community Housing Program Fund in an amount sufficient for the Town or its designee to create off-site affordable family or individual persons' housing, as the Planning Board may determine, and eligible for inclusion in Acton's subsidized housing inventory under M.G.L Chapter 40B."

- 2.3 The Acton Community Housing Authority recommended the Applicant make a monetary contribution equal to the difference between the affordable selling price and the market selling price (ranging from \$190,900 to \$220,800).
- 2.4 The proposed substitution maintains the overall number of units in Ellsworth Village.
- 2.5 The requested modification is minor, does not change the project in any significant way from how it was approved in the Original Decision, and therefore does not warrant a public hearing.

3 BOARD ACTION

Therefore, the Board voted at the meeting to **APPROVE** the proposed modifications as shown on the Plan with the following conditions:

3.1 CONDITIONS

- 3.1.1 The applicant shall make a monetary contribution to the Acton Community Housing Program Fund in the amount of \$50,000 prior to issuance of the final occupancy permit.
- 3.1.2 The applicant shall amend the Ellsworth Village Regulatory Agreement, Condominium Master Deed and any other documents related to the affordable units prior to issuance of the final occupancy permit.
- 3.1.3 Except as modified herein, the Original Decision, and the plan approved thereunder, shall remain in effect.

Signed on behalf of the Acton Planning Board


Roland Bartl, AICP, Planning Director

Copies to:

Applicant
Town Engineer
Town Clerk
Town Assessor

Building Commissioner
Municipal Properties Director
Natural Resource Director
Acton Community Housing Corporation

Board of Health
Town Manager
Fire Chief



ACTON PLANNING BOARD

Minutes of Meeting
April 23, 2013
Acton Town Hall
Room 204

Planning Board members attending: Mr. Ryan Bettez (Chairman), Mr. Jeff Clymer (Vice Chair), Mr. Roland Bourdon, Ms. Kim Montella, Mr. Ray Yacouby, Mr. Derrick Chin, Associate members Mr. Rob Bukowski and Michael Dube. Also present: Assistant Planner Ms. Kristen Domurad-Guichard and Planning Board Secretary Ms. Kim Gorman.

Absent: Ms. Woolley Busse

Mr. Bettez called the meeting to order at 7:30 PM.

Mr. Bettez appointed Mr. Dube and Mr. Bukowski as full members for tonight's meeting.

I. Citizens' Concerns

None raised.

II. Order of Layout relative to Relocation of Kennedy Right-Of-Way from NARA Park

Mr. Corey York, Town Engineer/Director of Public Works, requested the Board recommend the Order of Street Layout of a portion of Quarry Road.

Mr. Clymer motioned to recommend the Order of Street Layout to the Board of Selectmen, Ms. Montella 2nd; all in favor.

III. Reports

DRB: Ms. Montella reported the committee met with the Recreation Commission regarding the Pavilion at NARA. Ms. Montella stated their next meeting will be to meet with Panera to discuss their proposal to locate at the former McDonalds site in Kelley's corner.

IV. PH - 429 Great Road – Country Properties, LLC – Pegasus Farm Tack Shop Sign Special Permit

Mr. Bettez opened the 429 Great Road Pegasus Farm Tack Shop Sign Special Permit application public hearing. Mr. Thomas Fleming, representative for Country Properties presented an application for a special permit to install a freestanding sign. Mr. Fleming is asking for the sign to be 8' wide by 5' high (40 square feet) and requested a height of 10'. The sign will be located on the left side of the building when facing the street. Board members reviewed staff comments and examples of freestanding signs in the immediate surrounding area.

Board members questions and comments:

Overall, the height and area is too large. It was also noted that a landscaped area and a sign setback will be required as stated in the Bylaw as well as located not to obstruct site distances.

Board members suggested removing some of the wording to make the sign easier to read.

Mr. Yacouby motioned for sign not to exceed 8' in height and 30 square feet in area, Mr. Clymer 2nd; all in favor.

Vote: Mr. Bettez, Mr. Clymer, Mr. Yacouby, Ms. Montella, Mr. Chin, Mr. Rob Bukowski and Michael Dube. Motion carried 7-0.

Board members directed staff to have a draft decision to vote at next meeting.

V. Ellsworth Village – Request for Decision Amendment

Mr. James Fenton presented his request for an Amendment to the Ellsworth Village Senior Residences Special Permit. He stated the project will be fully sold with the exception of one remaining affordable unit. Mr. Fenton requested the Board allow the substitution for one of the three required affordable units with a monetary contribution in the amount of \$25,000 to the Acton Community Housing Program Fund. Mr. Fenton stated the last affordable unit has been available since 2009 and efforts to find a qualified buyer to purchase the unit have been difficult.

Board members reviewed a memo from the ACHC; recommending several alternative options in lieu of selling the last affordable unit. Mr. Fenton offered to contribute \$50,000 to the ACHC explaining he has been carrying this unit for many years.

Mr. Yacouby motioned to accept the amendment request and the \$50,000 donation to the ACHC, Mr. Dube 2nd; all in favor.

VI. Rafanelli & Kittredge, P.C. – Amendment to Sign Special Permit 12-04

Ms. Toni Rafanelli and Ms. Kimberly Ryan requested relief from Section 7.4.3.5 (permitting illumination from top down only) through Section 7.13.9 and permission through the power of the Board, to allow the sign to be illuminated using a light source projecting up from the ground. Ms. Ryan stated Rafanelli & Kittredge, P.C. was granted a sign Special Permit for a freestanding sign located at 1 Keefe Road on June 12, 2012. Ms. Ryan explained they had installed a solar light on top of the sign to comply with the section of the bylaw but have discovered that the lighting is not sufficient.

Board members reviewed documents and Board suggested options:

Research other lighting techniques gooseneck lighting (not extending the height of the sign); possible side lighting and possible higher wattage.

Board members suggested to drive by a night and directed staff to research if upward lighting has been approved under the current bylaw, if gooseneck lighting would increase the overall height and any issues with the current installed location and review at the next meeting.

VII. Consent Agenda – Draft Minutes of 03/19/13

The minutes of 03/019/13 were approved as amended.

VIII. Administrative Update

Mr. Clymer reported every zoning article passed at the Annual Town Meeting except the Donation Bins article. Board of Selectmen, Katie Green reported the Board of Selectmen voted to take no enforcement action against Donation Bins at this time and will review further.

The meeting was adjourned at 9:20 PM.

Respectfully Submitted,
Kim Gorman